

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION,

Plaintiff,

v.

PROTOCOL OF AMHERST, INC., D/B/A
PROTOCOL RESTAURANT,

Defendant.

19-CV-598
DECISION & ORDER

On May 9, 2019, the plaintiff commenced this action. Docket Item 1. On July 9, 2019, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 7. On July 29, 2019, the plaintiff moved to strike the defendant's second, twelfth, and fourteenth affirmative defenses, Docket Item 9; on August 21, 2019, the defendant responded, Docket Item 14; and on August 28, 2019, the plaintiff replied, Docket Item 15. On March 16, 2020, Judge McCarthy issued a Report and Recommendation ("R&R") finding that the plaintiff's motion should be granted. Docket Item 30. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a de novo review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ.

P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to grant the plaintiff's motion.

For the reasons stated above and in the R&R, the plaintiff's motion to strike the defendant's second, twelfth, and fourteenth affirmative defenses, Docket Item 9, is GRANTED. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of July 9, 2019, Docket Item 7.

SO ORDERED.

Dated: May 5, 2020
Buffalo, New York

/s/ Hon. Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE